IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.906 OF 2001

Kashinath Janardhan Gude)
presently confined at)
Central Prison, Thane.).. Appellant
(Org.Accused No.1)

Versus

The State of Maharashtra).. Respondent

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Smt.Usha Andewar, appointed advocate for the appellant.

Smt.V.R.Bhonsale, APP for the State-Respondent.

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CORAM : N.V.DABHOLKAR &
SMT.V.K.TAHILRAMANI, JJ

DATED : 27TH FEBRUARY, 2006

ORAL JUDGMENT : (PER N.V.DABHOLKAR, J)

1. The appellant-accused is aggrieved by the judgment and order dated 20th September, 2001 in Sessions Case No.2 of 1999, delivered by the Additional Sessions Judge, Palghar, District - Thane, and hence the present appeal under Section 374(2) of the Code of Criminal Procedure, 1973. By the impugned judgment, the appellant is held guilty for the offence punishable under Section 302 of the Indian Penal Code, and he is sentenced to suffer

rigorous imprisonment for life, fine Rs.1,000/-, in default, rigorous imprisonment for six months.

2. According to the prosecution story, the incident in question took place on 15th October, 1997, at about 10.00 or 11.00 p.m. at village-Arnala, within the territorial limits of Virar Police Station, District - Thane. Mahadeo Siba Amin (generally referred as Madhav Anna), who is the victim of the incident. Accused is said to have caused his death by inflicting injuries, by using a Barber's razor, at the alleged place and time. The incident is said to have taken place near the platform of the house. It is an admitted position that the accused had leased part of his house (a room) to the deceased. It is said that there was some dispute between the accused and the deceased over the payment of rent. However, the nature of dispute is narrated in different way. According to the complainant, probably, the dispute was because the deceased was not paying the rent, whereas, PW 3 Jayprakash states that accused was demanding enhanced rent, which the deceased was unwilling to pay.

3. The prosecution has examined in all nine witnesses and in order of their importance, they can be described hereinbelow. P.W.1 Shaver Zujha

Vasaikar, is the eye witness of the incident. He claims to be neighbour of the accused and also the eye witness. He had reported the matter to the police by FIR Exhibit-8, which set the investigation into motion. PW 8 Rocky Thatu is another witness, who provides some direct evidence. According to Rocky, he reached the spot immediately after the incident and he has assisted in taking the victim to the hospital. Rocky also claims to have seen the accused present on the spot and fleeing away. PW 5 Ganesh Pujari and PW 7 Ratnakar Chavan are the persons who reached the location upon hearing about the incident. After some time, they had seen the accused present at a location called "Parnaka" (probably, when the two witnesses were on way home). They claim to have seen the accused wearing blood stained clothes, and therefore, they took the accused to police station, Agashi. PW 3 Jayprakash, although son of the victim, is not witness of any importance, because he learnt about the incident while he was at home, and hence, he had rushed to the spot and by the time he reached the spot, he learnt that father was already shifted to Sanjivani Hospital, Virar. Except saying that there was a dispute between the deceased and the accused over the payment of rent of the premises leased by the accused to the deceased, the evidence of Jayprakash does not provide us any other

useful material.

. The police constable Balu Bandal (PW 2) was present in the police station when initially the complainant Shaver reached there with injured in a rickshaw. Since the victim needed immediate medical attendance, they were sent to Sanjivani Hospital, Virar. As the police constable started towards Arnala, the accused accompanied by PW 5 Ganesh and PW 7 Ratnakar were coming from the opposite direction in a rickshaw, and thus, the accused was handed over to the police constable by the prosecution witnesses. The police constable Bandal also confirms that, at that time, the clothes of the accused were stained with blood. PW 4 Sandip Patel is a panch witness and the police have utilised his services for drawing all the three panchanamas on record. Under the spot panchanama (Exhibit -15), the razor is said to have been seized from the location. At the time of arrest of the accused, panchanama (Exhibit-16) was drawn and blood stained clothes of the accused were also seized. The inquest of the dead body is at Exhibit 17.

. PW 6 Dr.Girish Divekar had performed the post-mortem on the dead body, and the post-mortem notes (Exhibit-22) contained the opinion by the

medical officer regarding cause of death. He has recorded that the victim Mahadeo died due to hypovolemic shock, due to multiple incised injuries.

. After the Doctor at Sanjivani Hospital declared Mahadeo to be dead, the complainant Shaver went to Virar Police Station and registered the complaint (Exhibit-8). The investigation was carried out by the Police Inspector Hemraj Choudhary (PW 9).

4. So far as the defence of the accused is concerned, it is suggested during the cross examination of the witnesses, that the complainant Shaver himself had illicit relations with the wife of the accused. The complainant Shaver himself took the razor from the wife of the accused and inflicted injuries on the victim, and thereafter, the accused is tried to be framed by implicating him with the charge of assault on victim Madhav Anna, which is a false charge. It is also suggested to the witness that the complainant Shaver is thus trying to remove obstacle in the path of his illicit relations with the wife of the accused. It is suggested to some of the witnesses that after the arrest of the accused, his wife has constructed a two storeyed building, which is financed by the complainant Shaver.

. Although, an admission is obtained from PW 7 Ratnakar that when he (PW 7) and PW 5 Ganesh took the accused to police station by rickshaw, accused was having a bleeding head injury at occipital region, the said admission does not seem to have been utilised for the purpose of crystalising a right of self defence of person or property.

. On reference to statement under Section 313 of the Code of Criminal Procedure, 1973, the accused had admitted that the complainant is resident in the vicinity, who has his house near that of the accused. He also admits that the deceased was residing as a tenant in the house owned by the accused. He has claimed that the complainant Shaver and his wife have illicit relations and he had lodged the case against the same. However, no documents appear to have been produced in order to substantiate this part of defence. Because, Rocky belongs to Shiv Sena, the accused claims that the witnesses are deposing against him; since he was a leader of Congress (I) Party. However, he concludes his statement by saying that he does not know as to how Madhav Anna expired. He pleads ignorance about the cause of death by saying that he is falsely implicated in the case.

5. Heard Smt.Usha Andewar, learned counsel for

the appellant and Smt.V.R.Bhonsale, the learned APP for the Respondent-State.

. On going through the impugned judgment, it can be seen that the learned trial Judge has discussed the evidence of all the witnesses. Considering the evidence of the complainant Shaver and PW 8 Rocky together, the trial Judge observed that PW 8 Rocky provided corroboration to the deposition of the complainant Shaver. The trial Court did not find any hesitation in relying upon the evidence of PW 7 Ratnakar and PW 5 Ganesh, to the effect that they had seen the accused with blood stained clothes, and therefore, they took him in a rickshaw and presented him at the police station, since both of them had learnt about the incident. In the opinion of the learned trial Judge, the medical evidence together with the ocular evidence available on record was sufficient to arrive at a conclusion that the death was homicide. The defence of the accused regarding illicit relations between the complainant Shaver and wife of the accused, and therefore, false implication of the accused so as to remove him from being an obstacle is felt by the learned trial Judge, to be a far stretched, and hence, unreliable.

6. Smt.Andewar, learned counsel for the appellant has tried to rely upon every possible lacuna in the prosecution. She has reiterated the defence raised before the trial Court and also tried to raise few new points. So far as the defence, as raised before the trial Court, we find that the defence, which learned counsel had crystalised during the cross-examination of the witnesses, was not fully supported by the accused himself. The story that after accused is arrested and since he is detained for the purpose of this case, as an under-trial prisoner, the wife of the accused has constructed two storeyed building, and with the finance provided by the complainant Shaver was put to all other witnesses. The same was not confronted to Shaver himself, who is said to have provided the finance to the wife of the accused, although, suggestion of development of illicit relations between the complainant Shaver and wife of the accused was advanced, which was denied by the complainant.

. As rightly observed by the trial Court, the defence deserves to be rejected on two counts. The defence tried to be developed on the basis of the alleged illicit relationship between the complainant Shaver and wife of the accused, was not fully supported by the accused during the course of his

statement under Section 313 of the Code of Criminal Procedure, 1973. The accused simply said that Shaver had illicit relations with his wife for which, he has lodged a complaint. The accused did not produce any documentary evidence, such as certified copy, in order to demonstrate that he has lodged the complaint against the complainant Shaver about the said illicit relations. The accused did not talk anything about the complainant Shaver financing for construction of house by the wife of the accused. In fact, during the cross-examination of the witnesses, and more particularly, that of the complainant Shaver, learned counsel for the defence has gone one step forward and that appears to be overstepping, which made the defence improbable. It was suggested that Shaver himself killed Madhav Anna and now he is trying to ensure imprisonment of the accused so that there should be no obstacle for him to maintain illicit relations with the wife of the accused. We agree with the observation of the learned trial Court that such story becomes unacceptable on the touchstone of probability. If at all the complainant has strong desire to maintain relations with the wife of the accused, and for that purpose, he desired to eliminate the accused, he could have killed the accused himself, instead of killing someone else, and then implicating the accused for the charge of murder

of that third person. It could have been easier to kill the accused with the help of his wife. It has suggested that the wife cooperated by providing razor to the complainant Shaver to kill Madhav Anna. If the intensity of illicit relations has gone to that extent, the wife could have cooperated also in killing the husband/accused. The learned trial Judge, therefore, committed no error in disbelieving this defence, suggested to the witnesses during their cross-examination, which was not fully supported by the accused himself in his statement under Section 313 of the Code of Criminal Procedure, 1973.

7. In the cross-examination of PW 7 Ratnakar, the defence has obtained an admission that when Ratnakar and Ganesh (PWs 7 and 5, respectively) took the accused to the police station, there was bleeding injury to the head of the accused. The learned counsel for the appellant could not develope existence of right of self-defence on the basis of so scanty material. Unfortunately, except for this isolated admission, no material appears to have been obtained on record by learned counsel for the appellant, who represented him in the trial Court. Although, investigating officer Hemraj admitted that the accused was referred to medical officer vide Exhibit-29, neither medical certificate of injuries,

if any, noticed on the person of the accused, is produced by the prosecution, nor it is sought to be obtained on record by the defence, either by appropriate application to the Court or by challenging the medical officer or investigating officer to produce the same. Thus, the injury and nature of injury upon the person of the accused, that was noticed by PW 7 Ratnakar soon after the incident, could not come on record, so that learned counsel for the appellant could develope right of self-defence of person. Eventually, the cross-examination of the complainant Shaver, who is the sole eye witness, does not seem to have been utilised for crystalising any such defence.

8. Smt.Andewar, learned counsel for the appellant, has taken us to the evidence of PW 3 Jayprakash and PW 8 Rocky Thatu. The evidence of Jayprakash (PW 3) shows that, by the time, he reached the location, his father was already removed to Sanjivani Hospital, whereas, Rocky deposed that Jayprakash was with them, who accompanied the victim to the hospital in the rickshaw. Smt.Andewar, learned counsel, was also critical about the evidence of Rocky, to the extent prosecution claims that Rocky saw the accused present at the location with razor in his hand. Admittedly, this version of Rocky has come

by way of improvement over and above the police statement (Paragraph 5 of his deposition), and therefore, it is not necessary to refer to the deposition of the complainant, in order to disbelieve Rocky to that extent. The complainant has narrated that he shouted for help, as he witnessed the assault by the accused upon Madhav Anna, and thereafter, accused ran away towards seashore, whereafter, the people gathered upon hearing his shouts. If that be so, and taking into account the fact that razor was found lying at the location, it can be presumed that the accused took to his heels as soon as possible, i.e. immediately after the complainant raised shouts. In that case, learned counsel is justified in arguing that the evidence of Rocky to the extent he claims to have seen the accused at the location with razor in his hand, is required to be looked with disbelief. However, Rocky (PW 8) cannot be branded as a lier. He is fair enough to admit in the cross-examination that he had not seen the assault personally. He also admits that he was informed by the complainant Shaver that Madhav Anna was murdered. Even if we take this conduct into account, i.e. conduct of the complainant Shaver, such narration would be admissible in evidence, as the evidence regarding subsequent conduct of the complainant Shaver, as influenced by the fact in issue, i.e.

assault by the accused upon the victim Madhav Anna. Even if we are inclined to accept the evidence of Rocky to the extent that he reached the location upon hearing commotion when the complainant Shaver informed him that the accused had caused murder of Madhav Anna, that will provide some corroboration to the testimony of the complainant, who claims to be eye witness of assault of the accused upon the victim Madhav Anna.

. To this witness (Rocky) also, it was suggested that, in fact, the complainant Shaver assaulted Madhav Anna and as the accused tried to stop the quarrel by separating them, the accused was also assaulted by the complainant Shaver, and therefore, the accused sustained injuries and blood stains to his clothes. At the cost of repetition, it must be said, that on reference to statement under Section 313 of the Code of Criminal Procedure, 1973, the accused himself does not seem to have supported such a story that was tried to be suggested during the cross-examination of the witnesses.

. Amongst the two witnesses, who apprehended the accused and took him to the police station, it is pertinent to note that PW 7 Ratnakar is brother-in-law of the accused himself. According to

Ratnakar, the accused is husband of his sister, and there is no reason why Ratnakar should help complainant and falsely implicate the accused.

. The dispute over the rent is an admitted fact. Although, the two parties are slightly at variance as to the nature of dispute, i.e. whether the dispute is because of non-payment of rent by the deceased or because of enhanced demand by the accused; that the relations were, to some extent, strained, is a small motive available to the prosecution on record. However, once the prosecution has eye witness account of the incident on record, issue of motive is insignificant.

9. Learned counsel Smt.Andewar also referred to the admission of Investigating Officer, that at the material time, Saloon of the accused was closed. She has pointed out from the FIR that in the FIR, the complainant claimed that accused opened the Saloon and procured the razor therefrom. In the deposition of the complainant Shaver, there is no such specific narration. It has also come in the evidence that Saloon and the residence of the accused is in two parts of the same structure, as can be seen from the sketch Exhibit-30. Arnala is a small place and the shop was closed, need not necessarily be taken as

closed under the lock and key, and at 10.00 p.m., Saloon can be deemed to be closed, because, there was no customer in the Saloon, at that time. This omission on the part of the complainant to depose that the accused had opened the Saloon and brought razor therefrom does not shake credibility of the complainant's version, in the light of recovery of razor from the location, at the time of drawing of spot panchanama. On the contrary, the weapon used for the offence, was a Barber's razor, would be sufficient to draw a possible presumption that the assailant is a person, who frequently handles and owns a Barber's razor. Admittedly, the accused is a Barber and the complainant is a Fisherman.

10. On reference to Column No.17 of the post-mortem notes, it can be seen that as many as eight incised injuries were inflicted on the victim, and all are on the head, shoulder and neck, which has resulted into death. The medical evidence is sufficient to demonstrate that the injuries could not have been suffered either by accident or by an attempt to commit suicide.

11. For the reasons discussed hereinabove, we are unable to take a view different than the one taken by the trial Court. We find no error in the finding of

guilty, conviction and sentence recorded by the trial Court.

. The appeal is, therefore, dismissed.

. The Registrar (Judicial) shall ensure supply of a certified copy of this judgment, free of costs; to the appellant through prison authorities.

. Advocate Smt.Usha Andewar was appointed to conduct the appeal on behalf of the appellant-prisoner, at the costs of the State. We quantify her professional charges at Rs.2,500/-.

(V.K.TAHILRAMANI,J) (N.V.DABHOLKAR,J)